

Before the
LIBRARY OF CONGRESS
COPYRIGHT OFFICE
Washington, D.C. 20540

GENERAL COUNSEL
OF COPYRIGHT

JAN 8 1997

RECEIVED

In re: Determination of Statutory)	
License Terms and Rates for Certain)	No. 96-5
Digital Subscription Transmissions)	CARP DSTR
of Sound Recordings)	

**OPPOSITION OF DIGITAL CABLE RADIO ASSOCIATES TO THE MOTION
OF THE RECORDING INDUSTRY ASSOCIATION TO COMPEL DCR
TO PRODUCE DOCUMENTS**

Digital Cable Radio Associates ("DCR"), by its attorneys and pursuant to 17 U.S.C. § 801(c) and to Section 251.45 of the Rules of the Copyright Office, 37 C.F.R. § 251.45, and the Copyright Office's Order of November 27, 1996 ("the Order"), hereby opposes the above-captioned motion of the Recording Industry Association of America ("RIAA").

I. Documents Regarding Surveys Following Testimony of Lou Simon

DCR objects to the RIAA's motion ("Motion") demanding production of a list of the names, addresses and telephone numbers of all Music Choice customers included, and a copy of each survey instrument as completed for each respondent, for each survey that follows the testimony of Lou Simon. DCR has complied with the requirements of Section 245.48(f) of the Rules of the Copyright Office, 37 C.F.R. § 245.48(f), and provided all the information necessary to test the validity of the documents accompanying the testimony of Lou Simon and offered into evidence. Whether lists of survey respondents and copies of survey

instruments are "routinely" provided in other proceedings is not relevant here. No further information is required, nor has the RIAA demonstrated it would be of any use.

Moreover, DCR's subscribers have an expectation of privacy that should be respected. DCR would be damaged immeasurably if subscribers were to believe that any directly identifiable information about them was being shared with outside parties. DCR's subscribers should not be subjected to unwarranted telephone interviews just to satisfy the RIAA's purported desire to replicate certain survey results. The RIAA should demonstrate (1) that the absence of the information sought and the inability to replicate the surveys provided by DCR has materially prejudiced its ability to proceed, and (2) that this harm outweighs the harm to DCR of providing the information. DCR respectfully suggests the RIAA cannot make such a showing.

DCR has already provided the questionnaires used to administer the study conducted for DCR by Chilton Express (Testimony of Lou Simon, Tab 1-D); the Valley Forge survey (Testimony of Lou Simon, Tab 1-C; see also DCR0000788-789); the Spectrum Programming survey (Testimony of Lou Simon, Tab 2; see also DCR0000790-825); and the Spectrum Tracking survey (Testimony of Lou Simon, Tab 3; see also DCR0000826-837). There is no basis for the RIAA's additional request.

II. Information Regarding the Music Choice Diary Study

DCR objects to the Motion demanding production of additional information with respect to materials produced in response to the RIAA's request for documents underlying

certain statements made by Lou Simon in his testimony.^{1/} The documents referred to were not included with DCR's Direct Case. The fact that the documents support Mr. Simon's testimony, and were produced to the RIAA in response to its request, is insufficient reason to require conformity with the strictures of Section 245.48(f) of the Rules.^{2/} Accordingly, the documents need not comply with the particular evidentiary requirements the RIAA seeks to impose.^{3/}

III. Documents Underlying Certain Figures

DCR objects to the Motion demanding production of documents in addition to the comprehensive cost and revenue information already provided. The amount of information provided by DCR stands in stark contrast to the data provided by the RIAA to any of the Services. DCR objects to the RIAA's blanket demand that its confidential, proprietary, and highly sensitive business documents must be further verified. These materials are source documents, which have been prepared by DCR executives in the ordinary course of business. These documents have not been introduced into evidence by DCR as part of its Direct Case. As such, they require no further authentication or verification.

^{1/} The documents produced are attached hereto at Ref. No. 1.

^{2/} The RIAA seems to argue that no witness should be allowed to rely upon a document unless that document complies with the Rules. That is clearly not the purposes of the Rules, which govern solely certain documents offered as evidence in a party's Direct Case. A contrary interpretation of the Rules would discriminate in favor of expert witnesses, third parties, and "retained" witnesses at the expense of employees or other staff witnesses who must rely upon documents produced for them in the ordinary course of business.

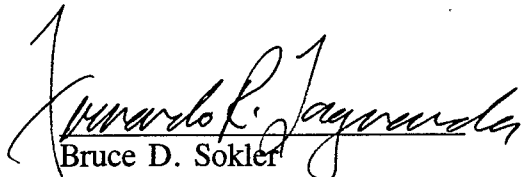
^{3/} Furthermore, the documents are intelligible on their face and do not require further elucidation.

IV. Document Withheld That is Labeled "Attorney Work Product"

DCR objects to the RIAA's demand for additional information regarding the foregoing document. The document was read by John R. Woodury, Ph.D, and could thus be construed as responsive to the RIAA's Request No. 15. However, DCR has objected to this request to the extent that it calls for the production of documents that do not underlie a specific assertion made by the witness.^{4/}

For the foregoing reasons, the instant motion should be **DENIED**.

Respectfully submitted,



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Dated: January 7, 1997

^{4/} See Letter of Fernando R. Laguarda to Steven M. Marks dated December 16, 1996, attached to the RIAA Motion at Tab L.

CONFIDENTIAL - RIAA

Music Choice Weekly Time Spent Listening
 (Monday-Sunday)

	PEOPLE		HOUSEHOLDS	
	M.C.	DTV	M.C.	DTV
BASE: TOTAL HOUSEHOLDS	248	295	134	145
Less than 1	9 4%	40 14%	-	5 3%
1-2	18 7%	27 9%	-	7 5%
2.01-3	11 4%	13 4%	2 1%	4 3%
3.01-4	13 5%	18 6%	2 1%	4 3%
4.01-5	15 6%	21 7%	5 4%	8 6%
5.01-6	6 2%	17 6%	2 1%	4 3%
6.01-7	10 4%	9 3%	6 4%	5 3%
7.01-8	12 5%	14 5%	6 4%	3 2%
8.01-9	8 3%	11 4%	6 4%	6 4%
9.01-10	6 2%	8 3%	1 1%	4 3%
10.1-13	17 7%	30 10%	16 12%	20 14%
13.1-17	16 6%	20 7%	6 4%	19 13%
17.1-23	30 12%	19 6%	16 12%	9 6%
23.1-28	16 6%	15 5%	14 10%	14 10%
28.1-38	28 11%	12 4%	17 13%	12 8%
38.1-48	15 6%	10 3%	17 13%	8 6%
48.1-70	10 4%	7 2%	13 10%	7 5%
70.1+	8 3%	4 1%	5 4%	6 4%
Mean Hours (per week)	19.02	12.00	26.68	19.77
Mean Hours (per average day)	2.72	1.71	3.81	2.82

Spectrum Research

DCR0000721

CONFIDENTIAL - RIAA
Page 6

Music Choice Diary Study • July, 1996

**Music Choice Time Spent Listening
(People)**

	WEEKEND			WEEKDAYS		
	TOTAL	M.C.	DTV	TOTAL	M.C.	DTV
BASE: TOTAL LISTENING	427	206	221	491	219	272
Less than 1	14 3%	4 2%	10 5%	13 3%	9 4%	4 1%
1-2	66 15%	32 16%	34 15%	49 10%	19 9%	30 11%
2.01-3	44 10%	20 10%	24 11%	29 6%	9 4%	20 7%
3.01-4	41 10%	18 9%	23 10%	38 8%	17 8%	21 8%
4.01-5	26 6%	11 5%	15 7%	35 7%	14 6%	21 8%
5.01-6	35 8%	14 7%	21 10%	22 4%	10 5%	12 4%
6.01-7	21 5%	13 6%	8 4%	29 6%	10 5%	19 7%
7.01-8	23 5%	10 5%	13 6%	26 5%	11 5%	15 6%
8.01-9	17 4%	9 4%	8 4%	23 5%	13 6%	10 4%
9.01-10	13 3%	9 4%	4 2%	17 3%	7 3%	10 4%
10.1-13	29 7%	14 7%	15 7%	31 6%	13 6%	18 7%
13.1-17	44 10%	21 10%	23 10%	41 8%	16 7%	25 9%
17.1-23	31 7%	17 8%	14 6%	41 8%	25 11%	16 6%
23.1-28	10 2%	8 4%	2 1%	29 6%	9 4%	20 7%
28.1-38	7 2%	2 1%	5 2%	27 5%	15 7%	12 4%
38.1-48	6 1%	4 2%	2 1%	10 2%	9 4%	1 *
48.1-70	-	-	-	23 5%	12 5%	11 4%
70.1+	-	-	-	8 2%	1 *	7 3%
Mean Hours (per week)	8.28	8.96	7.65	14.34	14.97	13.82
Mean Hours (per average day)	4.14	4.48	3.83	2.87	2.99	2.76

Spectrum Research

DCR0000722

CONFIDENTIAL - RIAA**Music Choice Time Spent Listening
(Households)**

	WEEKEND			WEEKDAYS		
	TOTAL	M.C.	DTV	TOTAL	M.C.	DTV
BASE: TOTAL HOUSEHOLDS	252	125	127	267	128	139
Less than 1 Hour	5 2%	1 1%	4 3%	4 1%	1 1%	3 2%
1-2 Hours	16 6%	6 5%	10 8%	7 3%	2 2%	5 4%
2.01-3	15 6%	10 8%	5 4%	13 5%	5 4%	8 6%
3.01-4	25 10%	12 10%	13 10%	8 3%	5 4%	3 2%
4.01-5	12 5%	4 3%	8 6%	11 4%	7 5%	4 3%
5.01-6	13 5%	3 2%	10 8%	11 4%	5 4%	6 4%
6.01-7	9 4%	5 4%	4 3%	11 4%	7 5%	4 3%
7.01-8	13 5%	9 7%	4 3%	6 2%	3 2%	3 2%
8.01-9	10 4%	6 5%	4 3%	9 3%	4 3%	5 4%
9.01-10	8 3%	4 3%	4 3%	9 3%	7 5%	2 1%
10.1-13	28 11%	15 12%	13 10%	27 10%	14 11%	13 9%
13.1-17	26 10%	15 12%	11 9%	28 10%	11 9%	17 12%
17.1-23	23 9%	11 9%	12 9%	27 10%	13 10%	14 10%
23.1-28	15 6%	5 4%	10 8%	13 5%	3 2%	10 7%
28.1-38	16 6%	7 6%	9 7%	24 9%	14 11%	10 7%
38.1-48	10 4%	8 6%	2 2%	13 5%	7 5%	6 4%
48.1-70	6 2%	3 2%	3 2%	27 10%	12 9%	15 11%
70.1+	2 1%	1 1%	1 1%	19 7%	8 6%	11 8%
Mean Hours (per week)	14.20	14.91	13.50	26.61	25.85	27.31
Mean Hours (per average day)	7.10	7.46	6.75	5.32	5.17	5.46

Spectrum Research

DCR0000723